

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LESTER CHARLES HAWKINS, #09398-078 §

VS. §

UNITED STATES OF AMERICA §

CIVIL ACTION NO. 6:05cv185
CRIM. NO. 6:01cr39(1)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the motion filed pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct a sentence should be denied. The Movant has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Movant to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Movant are without merit.

It is specifically noted that the Movant filed the § 2255 motion seeking relief in light of the Supreme Court's recent decision in *United States v. Booker*, 125 S.Ct. 738 (2005). *See also Blakely v. Washington*, 124 S.Ct. 2531 (2004). Magistrate Judge Guthrie correctly noted that the decision in *Booker* was a new rule of criminal law and was not subject to retroactive application on collateral review. *Booker* does not provide a basis for collateral relief pursuant to 28 U.S.C. § 2255. The conclusion that relief should be denied was correct. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the motion to vacate, set aside or correct the Movant's sentence is **DENIED** and the case is **DISMISSED** with prejudice. All motions by either party not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 27th day of June, 2005.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE